

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

AXA DISTRIBUTORS, LLC and)	
AXA ADVISORS, LLC,)	
)	
Plaintiffs,)	
)	Case No. 1:08cv188
v.)	
)	
GAYLE S. BULLARD et al.,)	
)	
Defendants.)	
)	

**DEFENDANTS' REPLY TO PLAINTIFF'S
RESPONSE TO ORDER TO SHOW CAUSE**

COME NOW Defendants, Gayle S. Bullard et al., and reply to Plaintiffs' Response to Order to Show Cause regarding Defendants' Motion to Reschedule Hearings on Defendants' Motion to Dismiss and Plaintiffs' Motion for Preliminary Injunction.

Defendants have simply requested that the hearing on the pending motions to dismiss, compel arbitration and for preliminary injunction be rescheduled either *before* August 11 or *after* August 22. Defendants have humbly requested this rescheduling only because of its great personal importance to counsel for Defendants to attend and participate in the out-of-town wedding festivities planned

for his daughter. Defendants have not sought to reschedule the hearing in order to obtain any advantage.

Plaintiffs have conditioned agreement to Defendants' requested rescheduling of the hearing on the pending motions upon an agreement by Defendants to an indefinite stay of the arbitration proceedings pending a ruling by this Court. However, Plaintiffs are obligated to file an answer in arbitration on or about August 21, 2008, unless the Court has ruled in Plaintiff's favor before that date. While the hearing is currently set for August 13, 2008, there is no obligation on the part of the Court to *rule* on the pending motions on or before that August 21, 2008, even if the hearing were to go forward as scheduled. Indeed, regardless of the date of the hearing, the *status quo* is that Plaintiffs have no guarantee of a ruling, one way or another, before their deadline to file an answer on August 21. And, Plaintiffs point to no prejudice they will suffer, outside of the general injury alleged as a basis of their motion for preliminary injunction, upon filing an answer in arbitration. That is, they have made no suggestion that they will, in filing an answer, somehow waive their rights to have this Court decide its motion. But, Plaintiffs condition that the obligation to file a Statement of the Answer be indefinitely postponed until such time as this Court rules gives to Plaintiff something more than it would otherwise be entitled even by filing their Motion for

Preliminary Injunction, that is, a guarantee that it must not respond at arbitration until this Court rules.

Plaintiffs also attempt, inappropriately, to argue the merits of their Motion for Preliminary Injunction as part of their Response to Order to Show Cause. In effect, they attempt to gain a preliminary injunction by way of opposing rescheduling the hearing. However, Defendants believe, and have shown in their Motion to Dismiss, that their claims should be in arbitration before FINRA. Further, the NASD Director should decide whether the parties have agreed to arbitrate these claims, and the scope of arbitration. Plaintiffs cannot meet their burden of showing irreparable harm or a likelihood of success on the merits of their claim, because there is a strong presumption in favor of arbitration and Defendants are unquestionably customers whose claims arise in connection with the business activities of Plaintiff AXA Distributors, LLC and of its associated person/s.

For the reasons set forth above, Plaintiffs have failed to demonstrate any actual prejudice in moving the hearing on the Motion to Dismiss and Motion for Preliminary Injunction outside of the general prejudice that forms the basis of the motion for preliminary injunction. Defendants' Motion to Reschedule Hearings should be granted and the hearing reschedule before August 11 and after August 22 at the convenience of the court.

Respectfully Submitted,

/s/ Caroline Smith Gidiere
One of the Attorneys for Defendants

Andrew P. Campbell
Caroline Smith Gidiere
Campbell, Gidiere, Lee, Sinclair
and Williams, PC
2100A SouthBridge Parkway, Suite 450
Birmingham, Alabama 35209
(205) 803-0051
Fax: (205) 803-0053
acampbell@cgl-law.com
cgidiere@cgl-law.com

M. Dale Marsh
Marsh, Cotter & Stewart, LLP
P. O. Box 310910
Enterprise, Alabama 36331
334-347-2626
Fax: 334-393-1396
mdm@enterpriselawyers.com

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Andrea Morgan Greene, Esq.
Armistead Inge Selden, III, Esq.
John Norman Bolus, Esq.
MAYNARD, COOPER, & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, AL 35203
Tel: (205) 254-1000
Fax: (205) 254-1999

/s/ Caroline Smith Gidiere
Of Counsel